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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re T.C., a Person Coming Under the Juvenile
Court Law.

FRESNO COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.C.,

Defendant and Appellant.

F058611

(Super. Ct. No. 06CEJ300030-3)

OPINION

APPEAL from an order of the Superior Court of Fresno County. Mary D. Dolas,
Commissioner.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,
for Plaintiff and Respondent.

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Appellant C.C. is the father of T.C., a minor. The juvenile court approved a permanent plan for T.C. of a legal guardianship, with no visitation by father. Father challenges the denial of the visitation portion of the permanent plan, contending it was an abuse of discretion by the juvenile court not to terminate the order after he completes parole. We will affirm.

FACTUAL AND PROCEDURAL SUMMARY

T.C., born in 2000, was removed from father's custody on December 25, 2005, after father drove his van into a parked trailer. T.C. and her brothers were inside the van at the time and were injured in the crash. As a result of this incident, father was convicted of driving while under the influence of alcohol or drugs and causing bodily injury, driving with a suspended license, and traveling at an unsafe speed for the conditions. Father was incarcerated for the convictions suffered as a result of the December 25 crash and was not scheduled to be released until February 6, 2008.

At the time of the December 25 crash, father already had a history of criminal convictions. In the 1990's, father was convicted of felony unlawful sexual intercourse with a minor. In August 1997, he was convicted of felony possession of cocaine base for sale. In December 2003, he was convicted of inflicting injury on a child. In September 2005, he was convicted of sexual battery and touching for sexual arousal.

T.C. and the other children were placed in the custody of the Merced County Human Services Agency after the December 25, 2005, crash. The Merced County Juvenile Court exercised jurisdiction over the minors, removed them from parental custody, and offered reunification services. The children were placed with a maternal cousin, S.K., in Fresno County.

On August 8, 2006, the Fresno County Department of Children and Family Services (the Department) filed a supplemental Welfare and Institutions Code section

300¹ petition in Fresno County, recommending the children be removed from S.K.'s care. On August 30, 2006, in a combined jurisdictional and dispositional hearing, the Fresno County Juvenile Court removed the minors and ordered reunification services be provided to the mother. Father was not provided with reunification services, but the juvenile court did order that he be given reasonable supervised visitation.

On December 5, 2006, T.C. visited with father at a supervised visit conducted at the Fresno County jail. On December 8 the juvenile court granted a request to administer medication to T.C. to treat her aggressive behaviors. On December 15, T.C. was suspended from school for looking at other girls over the bathroom stall walls.

T.C.'s mother failed to complete the requirements of her reunification plan. At the March 6, 2007, review hearing, the juvenile court terminated reunification services to the mother and set a section 366.26 hearing for July 3, 2007.

At the July 3 hearing, the matter was continued so that the Department could assess a permanent plan. Father requested that he be allowed to visit with T.C. when he was in local custody. The juvenile court ordered the Department to make efforts to arrange for visitation; however, the juvenile court also acknowledged receipt of a letter indicating father was ineligible for visits because of restrictions arising from his criminal convictions.

In November 2007, T.C.'s therapist indicated that visits with father were not recommended until father completed a parenting course.

Father indicated to T.C.'s social worker that the criminal case restrictions on visits had been removed. A counselor at the state prison where father was housed reported to the social worker that criminal court orders precluded father from having any contact with minors, including T.C.

¹All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

At an April 1, 2008, hearing, the juvenile court denied without prejudice father's request for visitation on the basis that it was not in T.C.'s best interest.

At an August 19, 2008, hearing, the juvenile court found long-term foster care to be the appropriate plan for T.C. At this time father was out of prison, but acknowledged that he was not allowed any contact with T.C. due to a parole condition. Father expressed a desire to establish visitation upon completion of parole. The Department recommended supervised visitation when parole ended. The juvenile court inexplicably issued an order for reasonable supervised contact, indicating that visitation, phone calls, or letters had to be supervised by the Department or a third party, and gave the Department the discretion to permit unsupervised visits.

On August 23, 2008, father was arrested and incarcerated on a parole violation. The violation was a phone call with T.C.

By February 2009, T.C.'s foster mother wanted to pursue legal guardianship of T.C. At this time, father had not been in contact with the Department for about six months.

On May 12, 2009, the Department filed a section 388 petition seeking to modify T.C.'s permanent plan from long-term foster care to legal guardianship. At the August 18, 2009, hearing on the section 388 petition, father opposed the modification. The prospective guardian asked that dependency not be terminated so that she might have additional support from the Department because of T.C.'s continued aggressive behaviors. T.C.'s counsel and court-appointed special advocate opposed termination of the dependency.

The juvenile court scheduled a settlement conference for September 30, 2009, prior to which father filed a request that the order allowing him reasonable visitation and contact remain in effect. The Department objected to any paternal visitation on the grounds that by the time father's parole would end, several years would have passed,

during which visitation was precluded by the parole condition and reinstituting contact at that point might be detrimental to T.C.

The section 366.26 hearing eventually was held on September 30, 2009. At the hearing, father's counsel represented that he had spoken with father's parole officer, who informed him that once parole ended, father would be permitted to contact T.C., despite his status as a Penal Code section 290 registrant.

The juvenile court established legal guardianship as the permanent plan, terminated the dependency proceedings, and ordered that there be no contact between father and T.C. The juvenile court stated that after his parole ended, father could file for a modification and seek visitation and a determination could be made at that time whether it would be in the best interests of T.C. for visitation to occur. Parental rights were not terminated.

DISCUSSION

Father appeals the juvenile court's no-contact order, contending it was an abuse of discretion to deny him any contact with T.C. after he completes parole. We conclude the juvenile court's no-contact order was neither arbitrary nor capricious; therefore, it was not an abuse of discretion.

Standard of review

When the juvenile court finds that adoption is not in the best interests of the minor and instead selects legal guardianship as the permanent plan, section 366.26, subdivision (c)(4)(C) provides that "The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child."

In denying visitation to father, the juvenile court here did not make specific findings of detriment. The lack of articulated findings on this point, however, does not require reversal of the decision. While it is preferable for the juvenile court to express each finding in support of its decision, we can and will imply a finding of detriment from

the record, provided it is supported by substantial evidence. (*In re Corienna G.* (1989) 213 Cal.App.3d 73, 83; see *In re Andrea G.* (1990) 221 Cal.App.3d 547, 554-555.)

We review the juvenile court's visitation order in conjunction with termination of the dependency for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) A court abuses its discretion when it exceeds the bounds of reason by making a decision that is arbitrary, capricious or patently absurd. (*Stephanie M.*, at p. 318.) Under the abuse of discretion standard, "[w]hen two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Id.* at p. 319.)

Analysis

Father's entire argument on appeal minimizes the severity of his criminal history and his status as a Penal Code section 290 registrant. Father had a history of sexual criminal misconduct with minors, which led to his status as a sexual offender who was required to register under Penal Code section 290. At one point during the dependency proceedings, father violated a condition of his parole by having contact with T.C.

At the time the juvenile court set a permanent plan of legal guardianship and terminated the dependency proceedings, father again was on parole and subject to a parole condition that precluded any contact with minors, including T.C. Father's parole is scheduled to end in January 2012. Both the Department and T.C.'s counsel objected to an order providing for visitation with father on the basis that by the time father's parole would end, several years would have passed, during which visitation was precluded by the parole condition and reinstituting contact at that point might be detrimental to T.C. T.C.'s therapist previously had urged no contact until father completed parenting, anger management, and substance abuse programs, which he apparently had not completed as of the date of the permanent plan hearing.

Father's last contact with T.C. was in August 2008, when he spoke with her on the telephone, resulting in his being returned to prison for violating parole. During that telephone conversation, father told T.C. that she would start living with him the next day, causing her to pack her clothes in anticipation. That is substantial evidence of irresponsible conduct that is detrimental to T.C.'s emotional well-being. Previous to that phone call, his last contact with T.C. had occurred in November 2007. As of January 2012, T.C. would have gone over four years since seeing father, and over three years without any type of contact with father.

After reunification efforts have terminated, and a minor cannot be returned to parental custody, the interest in preservation of the biological family is no longer paramount, and the focus shifts to the minor's interest in permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The overriding concern after the reunification period has ended is to provide a stable, permanent home for the child. (*In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1493-1494.)

The juvenile court could not order that contact take place between father and T.C. while father was on parole. This situation is purely the product of father's conduct and actions, and not of the juvenile court or any other entity. (See *In re Steven A.* (1993) 15 Cal.App.4th 754, 766 [the father's criminal conduct, resulting in incarceration, essentially suspended visitation].)

It is not reasonable to presume that the juvenile court could decide in September 2009 that it would foster permanency and stability for T.C. to recommence visitation with father in January 2012 after years of no contact. That determination can be made only in January 2012. We also do not know whether T.C.'s legal guardian would object to regular contact between T.C. and father in the future, but any such objections would have to be weighed as they might affect the permanency of T.C.'s placement. (*In re S.B.* (2004) 32 Cal.4th 1287, 1297 & fn. 4.)

A permanent plan hearing is designed to end the uncertainty of foster care and allow the minor to form a long lasting attachment to a permanent home. (*In re Jason E.* (1997) 53 Cal.App.4th 1540, 1548.) In determining whether to permit visitation between father and T.C., the juvenile court noted that circumstances had changed, apparently a reference to T.C.'s transitioning to a permanent plan, where the objective was different than when T.C. was in foster care.

We conclude the juvenile court's no-contact order was not an abuse of discretion. Father's parental rights were not terminated, and he was not prohibited from seeking modification of the no-contact order after his parole ends. At that time, it can be determined if interaction and visitation with father is in T.C.'s best interest and confers more than an "incidental benefit to the child" and does not adversely affect the stability and permanency of T.C.'s permanent plan. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

DISPOSITION

The order is affirmed.

CORNELL, Acting P.J.

WE CONCUR:

DAWSON, J.

HILL, J.